HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 21717 OF 1997

Between:

The General Manager, South Central Railway,
Secunderabad and another

… Petitioners

and

Smt. Sk. Khader Bee and another

… Respondents

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 21717 OF 1997

ORAL ORDER:

Questioning the order of the Labour Court (Central), Guntur, in CMP No.49 of 1989 dated 16.2.1996, the present writ petition is filed.

The 1st respondent is the widow of the deceased employee-late Meera Saheb. It was she who invoked the jurisdiction of the Labour Court (Central), Guntur, in CMP No.49 of 1989 for extending the benefit of the family pension scheme. The Labour Court, in its order, held that the petitioner was entitled for a sum of Rs.200/- per month as family pension from 22.9.1977 to 31.12.1988 i.e., for a sum of Rs.19,850/-. The order was passed directing the petitioners herein to pay a sum of Rs.19,850/- towards family pension for the period i.e. from 22.9.1977 to 31.12.1988 @ Rs.200/- per month.

On the petitioners invoking the jurisdiction of this court, an interim order was passed in WPMP No.26455 of 1997 dated 10.6.1998, wherein this court stayed the impugned order, subject to the condition that the petitioners pay a sum of Rs.10,000/- to the 1st respondent, who was required to give an undertaking that in case she failed in the writ petition, she would reimburse the amount.

Both Sri Gouri Shankar Sanghi, learned Senior Standing Counsel for the Railways and Sri P. Gopal Das, learned counsel for the 1st respondent, would agree that pursuant to the interim directions, the petitioners herein did pay the sum of Rs.10,000/- to the 1st respondent.

During the pendency of these writ proceedings, the 1st respondent also died and as a result, her legal representative i.e., her daughter was brought on record. Sri G.S. Sanghi, learned Senior Standing Counsel for the Railways, would fairly agree that even if the writ petition were to be allowed, the petitioners would not be in a position to recover Rs.10,000/- already paid to the 1st respondent, consequent upon her death. The only dispute which the learned standing counsel for the Railways would request this court to adjudicate is for the remaining extent of Rs.9,850/- as ordered by the Labour Court, Guntur.

Facts to the extent necessary are that the husband of the 1st respondent was appointed as Gangman on 1.10.1938. He was promoted as 'Keyman' later. He died on 5.6.1963. The Railways called upon its employees to exercise their option for being extended the benefit of the pension scheme vide its circulars dated 16.11.1957, 17.9.1960 and 13.11.1961. It is their specific case that despite issuance of these circulars, the 1st respondent's husband did not exercise his option and as a result his widow was not entitled to be extended the benefits of the family pension scheme. Along with the affidavit filed in support of the writ petition, a copy of Chapter II of the

Rules applicable to railway servants is enclosed. Para 201 (i) (c) extends the benefits to the employees in Class I, II and III, provided they opted for these rules before 19.12.1963. It is not in dispute that the husband of the 1st respondent died on 5.6.1963 even before expiry of the last date for exercise of the option i.e. 19.12.1963. In the affidavit filed in support of the writ petition at para 10 (f), the petitioners themselves make a reference to the fact that many of the pensionable employees who were in service on 31.12.1963 did not opt for the Family Pension Scheme, 1964 (for short 'the Pension Scheme') in view of the condition that two months emoluments were to be contributed for the eligibility of the family pension and that the employees had continuously not opted being well aware of the comparative benefits under the respective schemes.

Sri P. Gopal Das, learned counsel appearing on behalf of the 1st respondent, would refer to the note under Rule (8) of the Pension Scheme. Rule 8 and the Note thereunder read thus:

> **"Government employees in service on the 31st December, 1963, who are governed by the Liberalised Pension Rules wholly or partially, will have an option to elect this Scheme in substitution of the existing Family Pension benefits as admissible under the Liberalised Pension Rules or retain their existing benefits. The option will require to be exercised by the 30th June, 1964 in the form enclosed (Form A). Persons who fail to exercise option within the stipulated period will be deemed to have elected the New Scheme of Family Pension. Option once exercised will be final.**
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> **NOTE.__ In cases where the Government servant died without exercising the option during the period of option, the family pension should be sanctioned under the rules favourable to the family of the deceased employee."**

It is clear from the Note under Rule 8 of the Pension Scheme that in cases where the government servant dies during the period of

option, family pension would be sanctioned under the rules favourable to the family of the deceased employee.

The very fact that the husband of the 1st respondent died even during the period of option i.e. 19.12.1963, under para 201 (i) (c) or 30.6.1964 under Rule 8 of the Pension Scheme, would entitle the widow for the benefits under the Note to Rule 8 of the Pension Scheme and for the benefit of the Pension Scheme. The Labour Court in its order dated 16.2.1996, places reliance on the judgment of the Supreme Court in ***PREMILOBAI VISHNU DIXIT V. STATE OF MAHARASHTRA ([1])*** to hold that the Government had agreed to grant arrears of family pension w.e.f 22.9.1977, the date on which contribution of two months' emoluments by the pensioners was dispensed with and the persons who were to be granted the benefit of family pension would not be required to contribute two months emoluments. The Labour Court held that, in accordance with the decision cited supra, the 1st respondent was entitled for family pension from 22.9.1977 till 31.12.1988. In P.V. Dixit[1], the Supreme Court recorded the submission of Union of India that arrears of family pension would be granted from 22.9.1977, the date on which contribution of two months' emoluments by pensioners was dispensed with.

The very fact that the petitioners have referred to the Pension Scheme, in para 10 (f) of their affidavit filed in support of the writ petition, would show that the family Pension Scheme, 1964 is applicable to the case of the 1st respondent herein. As noted above

under the Note to Rule 8 of the Pension Scheme, where an employee dies even during the subsistence of the option period, his widow is entitled for being extended the benefits of the Pension Scheme and since the 1st respondent's husband died on 5.6.1963 during the currency of the option under para 201 (i) (c) or under Rule 8 of the Pension Scheme i.e., 19.12.1963 /30.6.1964, his widow is entitled for being sanctioned the family pension under the Rules favourable to the family of the deceased employee.

It is well-settled that a writ of Certiorari is as a rule discretionary and is not issued as a matter of course. It is only when the Award/Order of the Labour Court results in manifest injustice, would this court exercise its Certiorari jurisdiction under Art.226 of the Constitution of India.

As noted above, neither under Para 201 (i) (c) of the rules relied upon by the petitioners nor under Rule 8 of the Pension Scheme, can the order of the Labour Court, extending the benefits of family pension to the deceased's widow, be faulted. The amount involved is a paltry sum of Rs.19,850/-, of which Rs.10,000/- has already been paid to the widow of the deceased, who has also since expired. I find no error of law apparent on the face of the record, necessitating interference under Art.226 of the Constitution of India.

Since Sri G.S. Sanghi, learned counsel for the petitioners, placed reliance on a couple of judgments of the Supreme Court, it is necessary to refer to the law laid down therein.

In ***KRISHENA KUMAR V. UNION OF INDIA (2)***, the Supreme

Court while dealing with the question as to whether prescription of a cut off date for exercise of option was arbitrary, held fixation of such a cut off date was not arbitrary nor was it discriminatory.

In ***UNION OF INDIA VS. A.J. FABIAN (3.)***, the Supreme Court observed that though option was given to the respondent six (6) times, he did not avail of the same and as such his widow was not entitled for the benefits of the Pension Scheme.

Neither of the aforesaid judgments of the Supreme Court dealt with the situation where an employee died even during currency of the option nor was a rule similar to Rule 8 and the note thereunder of the Pension Scheme, arise for consideration in the aforesaid judgments of the Supreme Court. As such both these judgments have no bearing on the facts of the present case.

Viewed from any angle, the impugned order of the Labour Court does not necessitate interference.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

DATE: 8.8.2007

CVM

[1] . AIR 1985 SC 1196

2 . AIR 1990 SC 1782

3. (1997) 10 SCC 465